263 NLRB No. 168

D--9161 Hayward, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

U.J.'S

and

Case 32--CA--4197

HOTEL, MOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS UNION, LOCAL 50, HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION

DECISION AND ORDER

Upon a charge filed on January 14, 1982, by Hotel, Motel and Restaurant Employees and Bartenders Union, Local 50, Hotel and Restaurant Employees and Bartenders International Union, herein called the Union, and duly served on U.J.'S, herein called the Respondent, the General Counsel of the National Labor Relations Board by the Regional Director for Region 32, issued a complaint and notice of hearing on February 26, 1982, against the Respondent, alleging that the Respondent had engaged in, and was engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to

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this proceeding. The Respondent failed to file an answer to the complaint.

On July 21, 1982, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment and memorandum in support thereof, with exhibits attached.

Subsequently, on July 30, 1982, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. The Respondent failed to file a response to the Notice To Show Cause, and therefore the allegations in the Motion for Summary Judgment stand uncontroverted.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following.

Ruling on the Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations, Series 8, as amended, provides as follows:

The respondent shall, within 10 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegation in the complaint not specifically denied or explained in an answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board, unless good cause to the contrary is shown.

The complaint and notice of hearing served on the Respondent specifically states that unless an answer was filed to the complaint within 10 days from the service thereof ''all of the allegations of the complaint shall be deemed to be admitted to be true and may be so found by the Board.'' As noted above, the Respondent did not file an answer to the complaint, nor did it file a response to the Notice To Show Cause. No good cause to the contrary having been shown, 1 in accordance with the rules set forth above, the allegations of the complaint are deemed to be admitted and are found to be true. Accordingly, we grant the Motion for Summary Judgment.

On the basis of the entire record the Board makes the following:

Findings of Fact

I. The Business of the Respondent

The Respondent, a California corporation with an office and place of business in Hayward, California, has been engaged in the operation of a public restaurant selling food and beverages. During the past 12 months, the Respondent, in the course and conduct of its business operations, derived gross revenues in excess of \$500,000 and purchased and received goods or services valued in excess of \$5,000, which originated outside the State of California.

We find, on the basis of the foregoing, that the Respondent is, and has been at all times material herein, an employer

¹ See National Shuffleboard & Billiard Co., 221 NLRB 297 (1975).

engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. The Labor Organization Involved

Hotel, Motel and Restaurant Employees and Bartenders Union, Local 50, Hotel and Restaurant Employees and Bartenders International Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

On or about August 7, 1977, a majority of the Respondent's employees designated or selected the Union as their representative for the purposes of collective bargaining with the Respondent in the following described appropriate unit:

All employees employed by Respondent at its Hayward, California, facility engaged in the preparation, handling, and serving of food and/or beverages, including cooks, bartenders, waiters, waitresses, hosts, hostesses, cashiers, checkers, bussers, dishwashers, porters, and janitors, excluding guards and supervisors as defined in the Act.

The Respondent has recognized the Union as the exclusive bargaining representative of its employees in the above-described unit and has embodied such recognition in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period August 7, 1977, to August 6, 1982. Since on or about October 1, 1981, the Union has made written and oral requests of the Respondent to furnish it with timecards for unit employee Barbara Smith, which information is necessary for, and relevant to, the Union's performance as exclusive bargaining representative of the unit employees. On and after October 1,

1981, the Respondent has failed and refused to furnish the information requested of it by the Union.

Accordingly, we find that the Respondent has, since October 1, 1981, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. The Effect of the Unfair Labor Practices Upon Commerce
The activities of the Respondent set forth in section III,
above, occurring in connection with its operations described in
section I, above, have a close, intimate, and substantial
relationship to trade, traffic, and commerce among the several
States, and tend to lead to labor disputes burdening and
obstructing commerce and the free flow of commerce.

V. The Remedy

Having found that the Respondent has engaged in, and is engaging in, unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Accordingly, we shall order the Respondent to furnish the information found above to be necessary for, and relevant to, the Union's performance of its duties as the exclusive bargaining representative of the employees.

The Board, on the basis of the foregoing and the entire record, makes the following:

Conclusions of Law

- 1. Respondent U.J.'S is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
- 2. Hotel, Motel and Restaurant Employees and Bartenders
 Union, Local 50, Hotel and Restaurant Employees and Bartenders
 International Union, is a labor organization within the meaning
 of Section 2(5) of the Act.
- 3. By failing and refusing to provide the Union with the information it requested in writing on or about October 1, 1981, the Respondent has engaged in, and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.
- 4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations

Act, as amended, the National Labor Relations Board hereby orders
that the Respondent, U.J.'S, Hayward, California, its officers,
agents, successors, and assigns, shall:

- 1. Cease and desist from:
- (a) Refusing to bargain collectively with Hotel, Motel and Restaurant Employees and Bartenders Union, Local 50, Hotel and Restaurant Employees and Bartenders International Union, by refusing to furnish it with the information requested by it in writing on or about October 1, 1981.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.
- (a) Upon request bargain collectively with the above-named Union by furnishing it with the information requested by its written request of October 1, 1981.
- (b) Post at its Hayward, California, place of business copies of the attached notice marked ''Appendix.''² Copies of said notice, on forms provided by the Regional Director for Region 32, after being duly signed by the Respondent's representative, shall be posted by the Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

(c) Notify the Regional Director for Region 32, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated, Washington, D.C. September 17, 1982

	Howard Jenkins, Jr.,	Member
	Don A. Zimmerman,	Member
	Robert P. Hunter,	Member
(SEAL)	NATIONAL LABOR RELATIO	NS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively with Hotel, Motel and Restaurant Employees and Bartenders Union, Local 50, Hotel and Restaurant Employees and Bartenders International Union, by failing and refusing to furnish the said labor organization with the information it requested in writing on or about October 1, 1981.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL, upon request, furnish Hotel, Motel and Restaurant Employees and Bartenders Union, Local 50, Hotel and Restaurant Employees and Bartenders International Union, with the information which the Union requested in writing from us on or about October 1, 1981.

	U.J.'S	
	(Employer)	
Dated By		
(Repre	esentative) (Title)	

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, Breuner Building, Second Floor, 2201 Broadway, Oakland, California 94604, Telephone 415--273--6122.